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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/050,680	01/15/2002	Thomas Joseph Pecorini	05015.0388U2	4839
22045	7590	03/22/2004	EXAMINER	
BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			SHOSHO, CALLIE E	
			ART UNIT	PAPER NUMBER
			1714	

DATE MAILED: 03/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/050,680

Applicant(s)

PECORINI ET AL.

Examiner

Callie E. Shosho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

1. All outstanding rejections except for those described below are overcome by applicants' amendment filed 12/31/03.

The new grounds of rejection set forth below are necessitated by amendment and thus, the following action is final.

**Claim Rejections - 35 USC § 112**

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites that the concentrate "is adapted to provide a polyester composition having a moisture content of less than about 0.1 wt.%...". The scope of the claim is confusing because it is not clear what is meant by "adapted". Must the concentrate be modified in some way to provide the polyester composition with such moisture content or is it simply the addition of the concentrate itself to the polyester which provides the polyester composition with such moisture content? If the latter is true it is suggested that the above phrase is changed to "wherein the concentrate provides a polyester composition having a moisture content of less than about 0.1 wt.%...".

**Claim Rejections - 35 USC § 102**

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-7, 9-16, and 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Petiniot et al. (U.S. 2001,0049424).

The rejection is adequately set forth in paragraph 4 of the office action mailed 8/29/03 and is incorporated here by reference.

6. Claims 1, 3-11, and 13-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Siegle et al. (U.S. 3,766,126).

The rejection is adequately set forth in paragraph 7 of the office action mailed 8/29/03 and is incorporated here by reference.

7. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Rondy et al. (U.S. 5,824,731).

The rejection is adequately set forth in paragraph 8 of the office action mailed 8/29/03 and is incorporated here by reference.

Further, it is noted that given that Rondy discloses concentrate identical to that presently claimed, it is clear that when such concentrate is added to base polyester, the concentrate would inherently provide polyester composition with moisture content as presently claimed.

**Response to Arguments**

8. Applicants' arguments regarding Scheibelhoffer et al. (U.S. 5,670,561) and Phillips et al. (U.S. 5,686,515) have been considered but they are moot in view of the discontinuation of these references against the present claims.

9. Applicants' arguments filed 12/31/03 have been fully considered but, with the exception of arguments relating to Scheibelhoffer et al. (U.S. 5,670,561) and Phillips et al., they are not persuasive.

Specifically, applicants argue that:

(a) Petiniot et al. is not a relevant reference against the present claims given that Petiniot et al. do not disclose olefin/acrylate copolymer as presently claimed and given that Petiniot et al. disclose the use of low melt viscosity resin which is outside the scope of the present claims.

(b) There is no disclosure of Siegle et al. of olefin/acrylate copolymer as required in the present claims.

(c) Rondy is no longer applicable against present claim 1 given that the claim has been amended to recite limitation of claim 6 which was previously not rejected by Rondy.

With respect to difference (a), applicants argue that Petiniot et al. disclose the use of styrene-butadiene-styrene (SBS) block copolymer which is not required in the present claims but do not disclose the use of olefin/acrylate copolymer which is required in the present claims.

However, while it is agreed that Petiniot et al. require the use of SBS block copolymer, it is noted that in light of the open language of the present claims, i.e. "comprising", there is nothing in the present claims which excludes the use of such block copolymer.

It is noted that the present claims do require that low melt viscosity resins are excluded. Applicants state that Petiniot et al. do not meet this limitation. Presumably, this is due to the presence of the SBS block copolymer. However, paragraph 21 of Petiniot et al. disclose that the SBS block copolymer, for instance, possesses polybutadiene content of approximately 27% and is known under the tradename Finaclear 120, which is well known, as evidenced by Dupuy (U.S. 2004/0012001), to possess weight average molecular weight of 120,000. Given the high amount of styrene present in the block copolymer as well as its high molecular weight, it is the examiner's position, absent evidence to the contrary, that SBS block copolymer of Petiniot et al. is not a low melt viscosity resin.

Applicants also argue that there is no disclosure in Petiniot et al. of olefin/acrylate copolymer as presently claimed. However, it is noted that paragraph 25 of Petiniot et al. do disclose the use of olefin/acrylate copolymer such as ethylene-ethyl acrylate or ethylene-methyl acrylate.

With respect to argument (b), it is noted that col.1, lines 15-42 of Siegle et al. discloses color concentrate comprising olefin/aminoalkyl acrylate copolymer.

Applicants argue that the present invention does not include thermoplastic amine polymer disclosed by Siegle et al.

However, it is noted that the broad disclosure of olefin/(meth)acrylate copolymer in present claim 1 and present claim 10 clearly encompasses all types of (meth)acrylates including aminoalkyl acrylate disclosed in Siegle et al.

It is agreed that Siegle et al. do not disclose the specific type of olefin/(meth)acrylate utilized in the present invention which is why Siegle et al. is not applied against present claims 2, 12, and 19.

With respect to argument (c), it is noted that claim 6 was not previously rejected by Rondy in the office action mailed 8/29/03 given that claim 6 is drawn to polyester composition comprising concentrate and base polyester which is not disclosed by Rondy.

However, Rondy remains applicable against amended claim 1 given that claim 1 is drawn to concentrate, not polyester composition. The claim only requires that "when" the concentrate is combined with base polyester, that the polyester composition have moisture content less than about 0.1 wt.%. There is no requirement that the concentrate is actually added to base polyester. Given that Rondy discloses concentrate identical to that presently claimed, it is clear that "when" such concentrate is added to base polyester, the concentrate would inherently provide polyester composition with moisture content as presently claimed.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

EP 277598 discloses concentrate comprising 30-95% ethylene-ethyl acrylate copolymer and colorant.

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11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

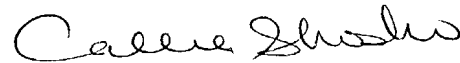
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Callie E. Shosho whose telephone number is 571-272-1123. The examiner can normally be reached on Monday-Friday (6:30-4:00) Alternate Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Callie E. Shosho  
Primary Examiner  
Art Unit 1714

CS  
3/11/04